Columbia City Freight Lines, Inc. *and* Teamsters National Freight Industry Negotiating Committee, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 25-CA-14823

28 June 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 3 August 1983 Administrative Law Judge Elbert D. Gadsden issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions as modified and to adopt the recommended Order as modified.

The judge concluded that the Respondent did not violate Section 8(a)(1) and (5) of the Act by failing or refusing to bargain with the Union about its decisions to close its Hammond and South Bend, Indiana terminals and to transfer the work from those terminals to its main terminal in Columbia City, Indiana.[1] We agree with the judge's conclusion, but we do so for the following reasons.

The Board recently held in *Otis Elevator Co.*,[2] that management decisions which affect the scope, direction, or nature of the enterprise are excluded from the limited manadatory bargaining obligation of Section 8(d). As the Board stated in *Otis Elevator*, the critical factor in determining whether a management decision is subject to mandatory bargaining is "the essence of the decision itself, i.e., whether it turns upon a change in the nature or direction of the business, or turns upon labor costs; *not* its effect on employees nor a union's ability to offer alternatives."[3] Applying that analysis to the facts of the instant case, we find that the Respondent's decision to close two of its three terminals and consolidate the work at the third terminal turned not upon labor costs but upon a significant change in the nature and direction of the business and therefore was not subject to mandatory bargaining.

As found by the judge, until mid-July 1982 the Respondent maintained truck terminals at Hammond, South Bend, and Columbia City, Indiana. The employees at each terminal were represented by a different Teamsters Local: Local 142 at Hammond, Local 364 at South Bend, and Local 414 at Columbia City. All of the relevant collective-bargaining agreements expired 31 March 1982.[4] As of June 1982, the Respondent had met once with the Charging Party, Teamsters National Freight Industry Negotiating Committee, in separate negotiations for a successor agreement.

On 9 July the Respondent notified Local 142 in writing that effective 12 July "[a]ll work presently being handled by Hammond, Indiana terminal will be transferred to the South Bend operations" and that all Hammond personnel would be offered a nonpaid transfer to South Bend. The Respondent's letter also described how South Bend would "become a break bulk terminal," and further stated:

> By consolidating the two operations, (Hammond and South Bend) CCFL will be able to provide better service which is necessary in order to compete in todays [sic] market. In addition CCFL will eliminate duplicate cost in overhead, reduce milage [sic] cost, maximize fuel usage, maximize equipment utilazation [sic], and eliminate the duplication of coverage between terminals.
>
> Minimum projected savings will be in excess of $170,000.00

The letter also contained attachments indicating various cost savings associated with the consolidation of operations, including: labor/revenue factors, loss ratios, terminal savings, and operational flexibility.

In a letter dated 6 September, the Respondent advised the South Bend employees of a "change of operations," i.e., the closing of the South Bend terminal, and stated:

> The decision itself has nothing to do with productivity of the South Bend people, but entirely on the loss of revenue once generated by O&M [Respondent's main customer in South Bend] through cartage and interline.

In this letter the Respondent also offered the South Bend employees the opportunity to transfer to Columbia City. Local 364's business agent, Warnock, received a copy of the letter from one of the Re-

[1] The judge concluded, and we agree, that the Respondent violated Sec. 8(a)(1) and (5) by failing to afford the Union an opportunity to bargain about the effects of its decisions to close the two terminals. Although the judge stated he was applying the remedy provided in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), for this violation, the language of his recommended Order does not fully conform to the remedy used in *Transmarine*. We shall modify the recommended Order accordingly.

[2] 269 NLRB 891 (1984).

[3] Id. at 892.

[4] All dates refer to 1982 unless otherwise indicated.

spondent's officials about a week before the South Bend terminal was closed.

The judge found that the Respondent's decision to close its Hammond and South Bend terminals resulted in a major shift in the direction of the Respondent's business, involving a substantial alteration and capital restructuring of its operation. He further found that this substantial change of the Respondent's business operations removed the decisions from the scope of the Respondent's mandatory bargaining obligation. In making these findings, the judge relied primarily on *Kingwood Mining Co.*,[5] and *General Motors Corp.*[6] Further, although finding that the record failed to explicitly show that the Respondent's reasons for closing the terminals were economic, the judge inferred the Respondent's economic motivation from the fact that it earlier had requested separate bargaining with the Union and from the fact of the closings themselves. He therefore found under *First National Maintenance Corp. v. NLRB*,[7] that the Respondent's economically motivated partial closing "outweighs any incremental benefit the Union might have derived from participating (bargaining) in making the decisions."

As indicated above, *Otis Elevator*, which was decided under the guidance of *First National Maintenance*, now provides the method of analysis for determining whether management decisions are subject to mandatory bargaining. Thus, looking at the essence of the Respondent's decision to close two of its terminals, it is clear that the decision did not turn on labor costs, albeit labor costs may have been one factor in the Respondent's decision. In fact, the record indicates that in closing the Hammond terminal the Respondent was seeking to reduce costs, eliminate duplication in costs and service, and maximize usage of equipment and fuel. Moreover, in closing the South Bend terminal, the Respondent also was reacting to the loss of a major customer. As a result of the closings, the Respondent's trucking operations were consolidated at one location. These facts establish that the decisions at issue here, no matter what they are labeled or how they are categorized, clearly turned on a fundamental change in the nature and direction of the Respondent's business.

Accordingly, since we conclude under *Otis Elevator* that the Respondent had no duty to bargain about its decision to close the two terminals, we affirm the judge's dismissal of this portion of the complaint.

[5] 210 NLRB 844 (1974).
[6] 191 NLRB 951 (1971).
[7] 452 U.S. 666 (1981).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Columbia City Freight Lines, Inc., Columbia City, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Pay the former employees of the Respondent's Hammond and South Bend terminals backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Order, until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union over the effects of the decisions to close the Hammond and South Bend terminals; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Order or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the failure of the Union to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount they would have earned as wages from the dates on which the Respondent closed the terminals to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ."

2. Substitute the attached notice for that of the administrative law judge.

MEMBER DENNIS, concurring.

I agree with my colleagues that the management decisions in issue here were not manadatory subjects of bargaining. Several factors influenced the Respondent's decisions, including a desire to reduce costs, to eliminate duplication of service, and to maximize usage of equipment and fuel. In addition, the Respondent was reacting to the loss of a major customer when it decided to close the South Bend terminal. The decisions were based on factors over which the Union had little or no control. To the extent that labor costs were a factor, it was at best an insignificant consideration in the Respondent's decisions. I therefore conclude that the Respondent's decisions were not amenable to resolution through collective bargaining and agree that this portion of the complaint should be dismissed. See my concurrence in *Otis Elevator Co.*, 269 NLRB 891 (1984). I also agree with my colleagues

that the Respondent violated the Act by failing to bargain about the effects of its decisions.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively in good faith with Locals 142, 364, and 414, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with respect to the effects on unit employees of our closing the Hammond and South Bend terminals.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with Locals 142, 364, and 414 of the Union with respect to the effects of our decision on unit employees as a result of closing our Hammond and South Bend terminals, including any disputes with respect to rates of pay, wages, hours, or other terms and conditions of employment, and reduce to writing any agreement reached as a result of such bargaining.

WE WILL pay the former employees of the Hammond and South Bend terminals backpay at the rate of their normal wages when last in our employ from 5 days after the date of the Board's Order, until the occurrence of the earliest of the following conditions: (1) the date we bargain to agreement with the Union over the effects of the decisions to close the Hammond and South Bend terminals, (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the Board's Order or to commence negotiations within 5 days of notice by us of a desire to bargain with the Union; or (4) the failure of the Union to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the dates on which we closed the terminals to the time they secured equivalent employment elsewhere, or the date on which we shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in our employ.

COLUMBIA CITY FREIGHT LINES, INC.

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge. Upon a charge of unfair labor practices filed on September 1, 1982, by Teamsters National Freight Industry Negotiating Committee, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Union) against Columbia City Freight Lines, Inc. (Respondent) the Regional Director for Region 25 issued a complaint on October 28, 1982.

In essence, the complaint alleges that Respondent laid off unit employees at its Hammond and South Bend, Indiana terminals, transferred work previously performed by such unit employees to its other terminal, and closed its Hammond and South Bend terminals; that Respondent took the aforedescribed action without affording the Union or the respective locals, either reasonable notice of such decisions, or an opportunity to bargain about the decisions or the effects of the decisions, and that by doing so, Respondent has failed and refused to bargain collectively with the Union as representatives of its employees, in violation of Section 8(a)(5) and (1) of the Act.

Respondent filed an answer on November 8, 1982, in which it denied that it has engaged in any conduct in violation of the Act as set forth in the complaint.

The hearing in the above matter was held before me in Fort Wayne, Indiana, on March 23, 1983. Prior to the hearing, Respondent advised the Regional Office for Region 25 that it would not appear, and it did not in fact appear in person or through representation. A brief has been received from counsel for the General Counsel which has been carefully considered.

Upon the entire record in this case and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Respondent is and has been a corporation duly organized under, and existing by virtue of, the laws of the State of Indiana. Respondent maintained its principal office and place of business at Columbia City, Indiana, as well as its facility in Hammond, Indiana, until July 12, 1982, and its facility in South Bend, Indiana, until September 13, 1982, where it is, and has been continuously engaged in the business of transporting freight and providing and performing related services.

During the 12-month period ending August 31, 1982, Respondent, in the course and conduct of its business operations derived gross revenues in excess of $50,000 from the transportation of freight and commodities from the State of Indiana directly to points outside the State of Indiana. During the same period, Respondent, in the

course and conduct of its business operations performed services valued in excess of $50,000 in States other than the State of Indiana.

Also, during the 12-month period ending December 17, 1982, a representative period, Respondent in the course and conduct of its business operations purchased and received at its Columbia City and/or Hammond, Indiana, and/or South Bend, Indiana terminals, goods and materials valued in excess of $50,000 directly from States other than the State of Indiana.

The complaint alleges, Respondent stipulates, and I find on evidence adduced at the hearing, that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges that the Union is a labor organization within the meaning of the Act, but Respondent contends that it is without sufficient knowledge as to whether or not the Union is a labor organization.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts*

Respondent operated a local cartage and warehousing operation for the transportation of freight. In carrying out its operation, it maintained truck terminals in Hammond, South Bend, and Columbia City, Indiana. Truckdrivers from its Hammond terminal would make pickup deliveries throughout the Chicago area, bringing such freight back to the terminal where it would be loaded on other trucks for further distribution throughout northern Indiana and other points to which Respondent had rights to deliver.

B. *Respondent's Relationship with Local Unions 142, 364, and 414*

Respondent and Local 142 had a collective-bargaining agreement from 1979 until it expired on March 31, 1982. *Don Sawochka* was secretary-treasurer of Local 142, in Gary, Indiana. He represented Respondent Hammond, Indiana employees for purposes of collective bargaining, concerning wages, rates of pay, and hours of employment.

Freeman Bushe Jr. is secretary-treasurer of Local 414 and he undisputedly testified that in such capacity he admits employees to membership who in turn participate in the affairs of the Local; that Local 414 exists for the purpose of processing employee grievances and representing employees for collective bargaining concerning wages, rates of pay, and hours of employment. Bushe was subcommittee chairman of the Teamsters National Freight Industry Negotiating Committee (TNFINC) as of June 8, 1962, when he succeeded Sawochka. In his capacity he was authorized to negotiate with Respondent on behalf of Local 364 and 414 of Columbia City, Indiana.

Robert Warnock Jr. is business agent of Local 364 and he undisputedly testified that in such capacity he represented employees at Respondent's South Bend, Indiana terminal. In that capacity he admits employees to membership and represents employees in processing grievances and labor disputes regarding wages, rates of pay, and hours of employment.

The Columbia City terminal served as the main terminal office. Respondent was bound by the collective-bargaining agreement with the Union (Teamsters Local 142) covering the Hammond terminal, the collective-bargaining agreement with Teamsters Local 364 covering the South Bend terminal, and an agreement with Teamsters Local 414 covering the Columbia City terminal. All of the agreements expired on March 31, 1982.

The following employees of the Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All local cartage drivers employed at the Respondent's Hammond, Indiana terminal, who are covered by the collective bargaining agreements described in subparagraph 6(e) of the complaint herein, and:
>
> All employees of the Respondent, including those employed at the Respondent's South Bend, Indiana terminal, who are covered by the collective bargaining agreements described in subparagraph 6(e) of the complaint herein.

Additionally, Respondent has recognized the respective local unions and the respective local unions have represented the respective above-described unit employees as more fully described in paragraphs 5(b)–(c) and 6(b)–(f) of the complaint herein.

Based on the foregoing uncontroverted evidence of record, I conclude and find that Locals 142, 414, and 364, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are, and have been at all times material herein, labor organizations within the meaning of Section 2(5) of the Act.

The record does not contain any evidence to support Respondent's affirmative defenses as set forth in its answer to the complaint, and such affirmative defenses are hereby dismissed as requested by counsel for the General Counsel. Counsel for Respondent's motion to correct the transcript as indicated in his brief is also granted.

When Respondent came into the area in Indiana in 1979, it extended recognition to Local 142 and an existing collective-bargaining agreement which expired March 31, 1982. Although the collective-bargaining agreement with Respondent had been negotiated by the Teamsters National Freight Industry Negotiating Committee (TNFINC), a multiemployer negotiating committee, prior to Respondent extending recognition to Local 142, when the contract was reopened for negotiations, Respondent, who was formally a member of Trucking Management Incorporated until late 1981, along with several other employers, requested separate negotiations rather than remain a part of the multiemployer unit. On conclusion of the National Master Negotiations, Respondent and the other companies which requested separate negotiations were represented by a subcommittee of various Teamsters assigned to negotiate with each employer. Don Sawochka, secretary-treasurer of Local 142,

was made chairman of the subcommittee assigned to negotiate with Respondent. As such, the negotiating subcommittee met on one occasion and Sawochka communicated with Respondent by telephone on several occasions thereafter, before he withdrew from the committee to work with Local 414 and Local 364 of the Indiana conference. He was succeeded by Freeman Bushe of Local 414 as chairman of the committee.

While serving as chairman of the committee, Sawochka did not receive any information that Respondent was going to close the Hammond terminal. If he or Local 142 had received such notification from Respondent, he was authorized to at least discuss concessions or suggest alternatives to Respondent's action. He would have been able to do the same thing in his capacity as subcommittee chairman of TNFINC.

Respondent's South Bend terminal was a local cartage operation, picking up and delivering freight within a radius of 75 miles. The majority of the work was performed for other carriers with Respondent splitting the difference between itself and other carriers. Respondent had a collective-bargaining agreement with Local 364 at its South Bend terminal.

C. *Respondent Unilaterally Laid Off its Hammond and South Bend Employees and Closed both Terminals*

The record shows that the Union had requested Respondent to bargain on several occasions and that Respondent met with the separate bargaining committee on one occasion concerning negotiations for a new contract to succeed the contract which expired March 31, 1982. The record does not contain any evidence that the parties engaged in good-faith bargaining until an impasse was reached. Instead, the evidence shows that on July 9, 1982, Respondent, without affording the Union an opportunity to discuss and bargain, notified Local Union 142 for the first time, that effective Monday, July 12, 1982, Respondent would lay off employees at the Hammond terminal and transfer all unit work to its South Bend, Indiana terminal. Unit employees were offered an opportunity to transfer and some of said employees did elect and were transferred to the South Bend terminal. The Union (Local 142) did not have an opportunity to bargain about Respondent's decision or the effects of its decision making the transfers.

The record evidence further shows that before the Hammond terminal was closed by Respondent, business agent for Local 364, Robert Warnock, was given a letter (G.C. Exh. 8) by an executive of Respondent, Jim King, who asked Warnock to sign for it. The letter, dated September 6, 1982, advised by implication the closing of the South Bend, Indiana terminal. Warnock suggested to King that there might be alternatives and since Bushe would be getting the people at Local 414 in Fort Wayne, they should all sit down and talk about it. King replied, there was absolutely no negotiations, this was it. Warnock stated that before he received the letter, he had not had an opportunity to bargain about the decision or the effects of the closing of the South Bend terminal or about the transfer of employees from South Bend to the Columbia City terminal. However, some employees did transfer to the Columbia City terminal, as did Clarence Hocker. Employees affected by the closing of the South Bend terminal were Dean Baker, Clarence Hocker, Robert Hocker, Joseph R. Karascon, Charles Klein Jr., Eldon E. Miller, R. James P. Meyers, Kenneth L. Sahli, Eugene D. Sherer, and Jerry L. Wilson. Warnock said if Local 364 had received timely notice of the closing it had authority to negotiate concessions or alternatives to the closing and the effects of the closing. He further stated that Jim King told him that Ogden and Moffitt constituted 80 percent of Respondent's work in South Bend.

Subcommittee chairman and representative of Local 414, *Bushe*, learned about the Hammond and South Bend closings after the fact through the locals. He said he had no prior knowledge of the closings of Hammond or South Bend, or of the transfer of any work from either terminal to Columbia, and he had not had an opportunity to bargain about the closings, transfer of work, or the effects of either. He had authorization to negotiate concessions on behalf of both locals, if an opportunity to do so had occurred. After he became chairman of the subcommittee, Respondent refused the Union's several requests to bargain.

Freeman Bushe Jr. was recalled and identified General Counsel's Exhibits 10, 9(B), and 9(A), in that order. General Counsel's Exh. 9 is a consolidated statement of earnings from Columbia City Freight Lines, Inc. He stated he received the statement in the mail last week, which he had requested in December 1982. The document is the profit-and-loss statement from Respondent.

Analysis and Conclusions

Although Respondent gave its Hammond and South Bend terminal employees an opportunity to transfer to its Columbia City terminal, in reality it gave the employees and the Union a fait accompli.

Even though the contract had expired on March 31, 1982, before Respondent closed its terminals, the Board has long held that "An employer is under a duty to bargain with the chosen representative of his employees concerning matters affecting their wages, hours, and terms and conditions of employment and cannot unilaterally change established employment conditions without bargaining, regardless of the existence or nonexistence of a collective-bargaining agreement." *Winn-Dixie Stores*, 147 NLRB 788, 789 (1964). The Board also said "The Union had a statutory right to be notified in advance of the proposed action and to be given an opportunity, if it so desired, to consult and negotiate with the Respondent about the need for elimination of unit jobs and the possibility of alternate approaches that might avoid such action" or, "about steps that might be taken to minimize the effects upon employees of the proposed action."

It is clear that Respondent in the instant proceeding did not in either case, give advance notice or afford the Union an opportunity to discuss or bargain with it about its decision to close, or about the effects of closing, its terminals before implementing its decisions to do so. However, since the Board issued its decision in the above-cited *Winn-Dixie Stores* case, the Supreme Court

has held that Section 8(d) of the Act limits subjects of mandatory bargaining to "issues that settle an aspect of the relationship between the employer and employees." The Court further stated that other decisions such as the order of succession of layoffs and recalls, production quotas, and work rules, are almost exclusively "an aspect of the relationship between employer and employee." *Chemical Workers v. Pittsburgh Glass Co.*, 404 U.S. 157, 178 (1971).

The Supreme Court has further defined the limitation on subjects of mandatory bargaining by pointing out that some management decisions, such as choice of advertising and promotion, product type and design, and financing arrangements, have only an indirect and attenuated impact on the employment relationship; and that a decision, involving a change in the scope and direction of the enterprise, is akin to the decision whether to be in business at all, "not in [itself] primarily about conditions of employment, though the effect of the decision may be necessary to terminate employment." *Fibreboard Corp. v. NLRB*, 379 U.S. 203, 223 (1964); *Teamsters Local 24 v. Oliver*, 358 U.S. 283 (1959).

Thus the question is raised in the instant case as to whether Respondent was under a duty pursuant to Section 8(d) of the Act, to bargain in good faith with the Union over Respondent's decision to close, and the effect of its having closed the Hammond and South Bend terminals, since both closings eliminated jobs of employees.

The General Counsel contends that Respondent was under a duty to bargain with the Union on both, the decision to close and the effects of the closing. In support of this position, the General Counsel cites *Bob's Big Boy Restaurants*, 264 NLRB 1369 (1982).

In this regard, it is noted that as early as 1965, the Supreme Court held that "an employer has the absolute right to terminate his entire business for any reason he pleases" "a partial closing is an unfair labor practice under Section 8(a)(3) if motivated by a purpose to chill unionism in any of the remaining plants of the single employer and if the employer may reasonably have foreseen that such closing would likely have that effect . . . or, that employer action which has a foreseeable consequence of discouraging concerted activities generally does not amount to a violation of Section 8(a)(3) in the absence of a showing of motivation which is aimed at achieving the prohibited effect." *Textile Workers v. Darlington Co.*, 380 U.S. 263, 268, 275, 276 (1965).

However, it is particularly noted that the record in the instant case does not contain any allegation or evidence that Respondent's decisions to close its terminals were motivated by a purpose to chill unionism in its remaining Columbia City terminal, or that Respondent may reasonably have foreseen its actions would likely have such an effect. At most, Respondent's actions might have had foreseeable consequences of discouraging concerted activities *generally*, but no evidence was introduced as the law requires, showing a motivation by Respondent to achieve such an unlawful effect. In the absence of such evidence I do not find that Respondent's closing of the Hammond and South Bend terminals constituted an unfair labor practice, in violation of Section 8(a)(3) of the Act. *Textile Workers v. Darlington Co.*, supra.

More specifically, on June 22, 1981, the Supreme Court held that, although Section 8(d) of the Act requires an employer to bargain about the effects of a decision to close or partially close such an operation, the determination depends on whether the "employer's economic reasons outweighs the incremental benefit that might be gained through the union's participation in making the decision." *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981).

In *First National Maintenance Corp.*, supra, the employer, pursuant to contract, was engaged in providing housekeeping, cleaning, maintenance, and related services to commercial enterprises. Because it was losing money, the employer, without affording the union an opportunity to bargain, notified the union and all employees employed at a building covered by one of the employer's contracts, that they were laid off and the contract for that work terminated. The termination eliminated a number of employees' jobs. The employer therein also refused the union's request to bargain about its decision. The Court held that the employer was required to bargain about the effect of its decision to terminate the contract with one of its customers for economic reasons. However, in holding that the employer was not required to bargain about its management decision terminating the contract with said customer because it was a partial closing, the Court said "the harm likely to be done to an employer's need to operate freely in deciding whether to shut down part of its business purely for economic reasons outweighs the incremental benefit that might be gained through the Union's participation in making the decision, and we hold that the decision itself is not part of 8(d)'s 'terms and conditions' . . . over which Congress has mandated bargaining."

In *Bob's Big Boy Restaurants*, cited and relied on by counsel for the General Counsel, the Board held that the employer's shutdown of its shrimp processing operation constituted a subcontracting of the shrimp processing work, rather than a partial closing of its food preparation business, and as such, was not a major shift in the direction of its main business (food preparation), a substantial capital restructuring or investment as was the case in *Kingwood Mining Co.*, 210 NLRB 844 (1974), and *General Motors Corp.*, 191 NLRB 951 (1971), and the operation was not substantially altered. Consequently, subcontracting the shrimp processing operation pursuant to a subcontracting agreement was not a sufficiently substantial change so as to remove the decision to do so from the scope of employer's mandatory bargaining obligation.

It is readily observed however, that the facts in *Bob's Big Boy Restaurants* are distinguishable from the facts in the instant case, where Respondent did not subcontract work to a third party, but instead, closed its Hammond and South Bend terminals and transferred the work therefrom to its main Columbia City terminal, which performed the same work. Under these circumstances, I find, pursuant to the Board's analysis in *Bob's Big Boy*, supra, that Respondent's decision to close its Hammond and South Bend terminals resulted in a major shift in the direction of Respondent's main business operations (transportation of freight), a substantial alteration and

capital restructuring of its operation. *Kingwood Mining Co.*, supra, and *General Motors Corp.*, supra. Additionally, I further conclude and find that Respondent's decision resulted in a change of its business operation that was sufficiently substantial to remove its decisions from the scope of Respondent's mandatory bargaining obligation.

Moreover, while the evidence of record fails to explicitly show that Respondent's reasons for closing the Hammond and South Bend terminals were economic, it may be reasonably inferred from the fact that Respondent requested separate bargaining rather than continue with multiemployer (TNFINC) bargaining, and from the fact of the closings itself, that both terminals were not sufficiently profitable to Respondent. As such, Respondent's partial closing of its freight transportation business purely for economic reasons, outweighs any incremental benefit the Union might have derived from participating (bargaining) in making the decisions. *First National Maintenance Corp. v. NLRB*, supra. Assuming arguendo, however, that Respondent's reasons for closing the terminals were not economic, its decisions were nonetheless not subject to mandatory bargaining, since the decisions were for a partial closing, and the law is well settled that "an employer has an absolute right to close his entire business for any reason he pleases." *Textile Workers v. Darlington Co.*, 380 U.S. at 268. As the Court said in *Fibreboard*, 379 U.S. at 223, such decisions are akin to decisions closing the entire operation.

Consequently, since Respondent is obligated to bargain with the duly designated bargaining representative union of its employees about the effects of closing the Hammond and South Bend terminals, failing to do so, and unilaterally closing the terminals prior to affording the Union an opportunity to bargain with it in respect thereto, Respondent has failed and refused to bargain in good faith, in violation of Section 8(a)(1) and (5) of the Act.

Inasmuch as the complaint alleges Respondent violated Section 8(a)(1) and (5) of the Act by failing or refusing to bargain with the Union about its decisions laying off employees and closing the Hammond and South Bend terminals, said allegation should be dismissed for the foregoing reasons and authority discussed herein.

IV. THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act.

It having been found that Respondent interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, by refusing to bargain with the duly designated union representative of employees, concerning the effects on employees as a result of its closing the Hammond and South Bend terminals, Respondent has failed and refused to bargain with the Union in violation of Section 8(a)(1) and (5) of the Act. The recommended Order will provide that Respondent cease and desist from engaging in such conduct.

Because of the character of the unfair labor practices herein found, the recommended Order will provide that Respondent cease and desist from or in any like or related manner interfering with, restraining, and coercing employees in the exercise of their rights guaranteed by Section 7 of the Act. *NLRB v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (4th Cir. 1941).

CONCLUSIONS OF LAW

1. Columbia City Freight Lines, Inc., Respondent herein, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Locals 142, 364, and 414, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, are and have been at all times material herein, labor organizations representing Respondent's employees within the meaning of Section 2(5) of the Act.

3. The appropriate unit is:

> All truckdrivers, helpers, dockmen, warehousemen, checkers, power lift operators, hostlers and such other employees formally at Respondent's Hammond, Indiana terminal, as may be presently or hereafter represented by the Union, engaged in local pickup, delivery and assembling of freight within the area located within the jurisdiction of the Local Union, not to exceed a radius of 25 miles, and all employees of Respondent, including those employees formally employed at the Respondent's South Bend, Indiana terminal, who are covered by the collective bargaining agreements described in subparagraph 6(e) of the complaint, as amended herein.

4. By unilaterally laying off its employees in two of its terminals, closing both terminals, and transferring the work therefrom to its main terminal, Respondent has failed and refused to bargain about the effects of its decisions on employees, in violation of Section 8(a)(1) and (5) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, Columbia City Freight Lines, Inc., Columbia City, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with the duly designated representative union of its employees, with respect to the effects on employees from the closings of its terminals.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by the Act.

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[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

(a) Pay the former employees of Respondent's Hammond and South Bend terminals their normal wages for the period beginning with the date of this Order, until the occurrence of the earliest of the following conditions: (1) the date Respondent bargains to agreement with the Union over the effects of the decisions to close its Hammond and South Bend terminals, (2) a bona fide impasse in bargaining; (3) the failure of the Union to commence negotiations within 5 days of receipt of Respondent's notice of its desire to bargain with the Union; or (4) the failure of the Union to bargain in good faith.[2]

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due each of the terminated Hammond and South Bend terminal employees under the terms of this Order.

(c) Upon request bargain with Locals 142, 364, and 414, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the collective-bargaining representative of the employees in the above-described appropriate unit respecting the effects of the decisions to close the Hammond and South Bend terminals, respecting rates of pay, wages, hours, or other terms and conditions of employment, and reduce any agreement reached to writing.

(d) Post at its Columbia City terminal, Columbia City, Indiana, copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Regional Director for Region 25, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order, what steps Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint be and it hereby is, dismissed insofar as it alleges violations of the Act not found herein.

[2] This is the Board's accepted remedy for 8(a)(5) violations involving failure to bargain over effects. See, e.g., *Royal Plating Co.*, 160 NLRB 990 (1966); *Transmarine Navigation Corp.*, 170 NLRB 389 (1968); *Interstate Tool Co.*, 177 NLRB 686 (1969).

[3] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."